

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**TOMMY MITCHELL,**

**Defendant.**

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**93-CR-30132-WDS**

**MEMORANDUM & ORDER**

**STIEHL, District Judge:**

Before the Court is defendant's motion to vacate his conviction and sentence (Doc. 151) which he has filed in his criminal case. As the Seventh Circuit noted in *Vitrano v. United States*, 643 F.3d 229, 233 (7th Cir. 2011):

Any motion filed in the district court that imposed sentence, and substantively within the scope of § 2255, is a motion under § 2255, no matter what title the prisoner plasters on the cover. Call it a motion for a new trial, arrest of judgment, mandamus, prohibition, coram nobis, coram vobis, audita querela, certiorari, capias, habeas corpus, ejectment, quare impedit, bill of review, writ of error, or an application for a Get-Out-of-Jail Card; the name makes no difference. It is substance that controls.

In this case, the defendant previously filed a motion for habeas relief, *see, Mitchell v. United States*, 94-CV-704-WLB which was dismissed in 1995. He cannot now file a "motion to vacate" in his criminal case. He has not sought, nor received leave of the Seventh Circuit to file a second or successive habeas petition, and this Court therefore cannot consider his motion to vacate and it is **DENIED**.

**IT IS SO ORDERED.**

**DATE: 4 April, 2012**

**/s/ WILLIAM D. STIEHL**  
**DISTRICT JUDGE**